

LAW OFFICES OF

Timothy D. McNair

ATTORNEY AND COUNSELOR AT LAW

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2005 FEB 22 A 10: 46

February 16, 2005

Jeff S. Jordan, Esquire
Supervisory Attorney Complaints Examination
and Legal Administration
Federal Election Commission
Washington DC 20463

RE: MUR5556

Dear Mr. Jordan:

Kindly accept this letter and the enclosed documents as Steven Porter's response to the charge identified above.

Regarding the materials filed by John Mizner, Erie County Republican Committee Chairman, with his Complaint, the script is accurate.

Enclosed herewith please find Memoranda from Carolyn Rubenstein and Scott Cohagan. Based on the available information, the ad began to run on September 27th and was stopped during the day of October 1, 2004. The ad ran less than 100 times.

The reason the ad was pulled was for the omission stated in Mr. Mizner's Complaint, that it failed to include the "paid for" disclaimer. Immediately upon learning of this omission, the Porter Campaign discontinued the ad and contacted the agencies and broadcasters.

The ad was produced by Vic Rubenstein Associates, 985 Churchill-Hubbard Road, Youngstown, OH 44505, (330) 759-5081. Their failure to include the "paid for" disclaimer should have been caught by the Campaign, but it was not.

Dr. Porter disputes the merit of Mr. Mizner's Complaint regarding the use of the word "endorse" rather than "approve." A review of 11 C.F.R. § 110.11(c)(3)(i) requires a statement by the candidate that identifies the candidate and states that he or she has approved the communication. In common parlance, the word "endorse" is functionally

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Jeff S. Jordan, Esquire

-2-

February 16, 2005

equivalent to the word "approve," although the examples contained in 11 C.F.R. § 110.11(c)(3)(iv)(A) do recommend the use of the word "approve." The violation, if any, is de minimis at most and, given the brief period of time that the ad was on the air, should not be held to constitute a substantial violation.

In light of the foregoing, Dr. Porter submits that the Complaint does not merit further action by the Commission. The violation, if any, was inadvertent, de minimis, and was corrected immediately upon learning of its existence. The actions of the candidate do not demonstrate any intent to avoid, violate, or evade the requirements of the Act.

Thank you for your consideration of the foregoing. Please contact me should you require further information.

Very truly yours,

LAW OFFICES OF TIMOTHY D. McNAIR

By 
Timothy D. McNair, Esquire

TDM/may
Enclosures

cc: Dr. Steven Porter

27044161239

October 18, 2004

MEMORANDUM

TO: Dr. Steven Porter
FROM: Carolyn Rubenstein
SUBJECT: Information you requested

Hello Steve ...

The radio announcement entitled "Porter for Congress" ran as follows:

<u>Station</u>	<u>Dates</u>	<u>Number of Airings</u>
WJET-AM	Thurs. Sept. 30 th	5
WRIE-AM	Sept. 29 th , 30 th & Oct. 1 st	22
WXKC-FM	Sept. 29 th , 30 th & Oct. 1 st	27
WPIC-AM	Sept. 29 th , 30 th & Oct. 1 st	18
WWGY-FM	Not yet available	
WISR-AM	Sept. 28 th , 29 th , 30 th , & Oct. 1 st	19
WMGW/WTIV-AM	Not yet available	

As soon as we were notified of the problem, we contacted all stations and pulled that particular ad.

Thank you.

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Forever Broadcasting

10/19/04

To: Jim Perko

From: Scott D. Cohagan

RE: "Porter for Congress #2" - WWGY-FM, WMGW/WTIV-AM

Jim,

As per our conversation, I have looked into your question about the commercial "Porter for Congress #2" and I have listed how many times I believe the commercial aired for each station. I will be sure to follow up with you shortly to see what questions, comments, or concerns you might have.

WWGY-FM

9/27/04 - 4x

9/28/04 - 4x

9/29/04 - 3x

9/30/04 - 4x

10/01/04 - 2x

WMGW/WTIV-AM

9/27/04 - 4x

9/28/04 - 6x

9/29/04 - 3x

9/30/04 - 4x

10/01/04 - 2x

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